FILED
JUN 5 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 207

COMPRESS OF UNION, ET AL.,
Petitioners,

vs.

A. H. STONE, Tax Commissioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI AND BRIEF IN SUPPORT THEREOF.

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J. N. Flowers,
J. T. Brown,
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Counsel for Petitioners.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary statement of the matter involved	1
Statement of the case	2
Reasons relied on for allowance of the writ	4
Prayer for writ	5
Brief in support of petition for writ of certiorari	7
Opinion of the court below	7
Jurisdiction	7
Statement of the case	8
Specification of errors	8
Manner wherein Federal questions were raised	9
Argument	10
Point I. The Mississippi Tax statute contravenes the Federal statute	10
Point II. The immunity of the Commodity Credit Corporation under the Commodity Credit Corporation Act must have thereinto integrated, to effectuate the intent of Congress, the decisions of this Court then (March 8, 1938) existent and controlling. This Court by a change of decision since March 8, 1938, is powerless to amend by judicial legislation this act of Congress and thereby change the immunization granted at the time of its enactment	21
Conclusion	27
Appendix A—Section 713a(5) of Title 15 U. S. C. A.	28
Appendix B—Laws Mississippi (1934), Chapter 119	28
Appendix C—Opinion of the Supreme Court of Mississippi in *Compress of Union* v. *Stone*	57
Appendix D—Opinion of the Supreme Court of Mississippi in *Tax Commission* v. *Brown*	60

Page

Appendix E—Article 6 of the Constitution of Mississippi, Sections 145, 286 and 287 83

TABLE OF CASES CITED.

Alaska Fish, etc., Co. v. *Smith*, 255 U. S. 48, 65 L. Ed. 495 13
Alward v. *Johnson*, 282 U. S. 509, 75 L. Ed. 496 19, 25
American Express Co. v. *Maynard*, 77 N. W. 320, 118 Mich. 682 17
Bank of Philadelphia v. *Posey*, 130 Miss. 825, 95 So. 134 23
Bransford, Ex parte, — U. S. —, 84 L. Ed. 846 13
Citizens Savings Bank v. *Owensboro*, 173 U. S. 636, 43 L. Ed. 840 14
Colorado National Bank v. *Bedford*, — U. S. —, 84 L. Ed. 730 13
Crawford v. *Hubbell*, 89 Fed. 961, 177 U. S. 419, 44 L. Ed. 829 17
Dinsmore v. *Southern Express Co.*, 102 Fed. 794, 183 U. S. 115 17
Federal Compress & Warehouse Co. v. *McLean*, 291 U. S. 17, 78 L. Ed. 622 13
Federal Land Bank of New Orleans v. *Crosland*, 261 U. S. 374, 67 L. Ed. 703 5, 15, 19
Gelpcke v. *Dubuque*, 1 Wall. 175, 17 L. Ed. 520 23
Gillespie v. *Oklahoma*, 257 U. S. 501, 66 L. Ed. 338 22
Graves v. *New York*, 306 U. S. 466, 83 L. Ed. 927 21
Graves v. *Texas Co.*, 298 U. S. 393, 80 L. Ed. 1236, 56 Sup. Ct. 818 12, 19
Gregg Dyeing Co. v. *Query*, 286 U. S. 472, 76 L. Ed. 1232 16
Havemeyer v. *Iowa County*, 3 Wall. 204, 18 L. Ed. 38 23
Helvering v. *Gerhardt*, 304 U. S. 405, 83 L. Ed. 1427 21
Home Bldg. & Loan Assn. v. *Blaisdell*, 290 U. S. 398, 78 L. Ed. 413 13
Indian Motocycle Co. v. *United States*, 283 U. S. 570, 75 L. Ed. 1277 12, 19, 27
Iowa-Des Moines National Bank v. *Bennett*, 284 U. S. 239, 76 L. Ed. 265 14

Page

James v. *Dravo Contracting Co.*, 302 U. S. 134, 82 L. Ed. 155 ..... 12, 24
James Stewart & Co. v. *Sadrakula*, — U. S. —, 84 L. Ed. 375 18
Leloup v. *Mobile*, 127 U. S. 640, 32 L. Ed. 311 25
Magnano v. *Hamilton*, 292 U. S. 40, 78 L. Ed. 1109 13
McGoldrick v. *Berwind-White Coal Mining Co.*, — U. S. —, 84 L. Ed. 343 16
McGoldrick v. *Compagnie General Transatlantique*, — U. S. —, 84 L. Ed. 602 ..... 5, 17, 18
McGoldrick v. *Gulf Oil Corporation*, — U. S. —, 84 L. Ed. 597 ..... 5, 17, 18
M'Culloch v. *Maryland*, 4 Wheat. 316, 4 L. Ed. 579 26
Metcalf v. *Mitchell*, 269 U. S. 514, 70 L. Ed. 384 26
Mississippi Tax Commission v. *Brown*, 193 So. 795 ..... 7, 21, 22
Notgrass Drug Co. v. *State*, 175 Miss. 358, 165 So. 884 18
Ohio Life Ins. & Trust Co. v. *Debolt*, 16 How. 416, 14 L. Ed. 997 23
Pacific American Fisheries v. *Alaska*, 269 U. S. 269, 70 L. Ed. 272 13
Panhandle Oil Co. v. *Mississippi*, 277 U. S. 218, 72 L. Ed. 857 ..... 12, 19, 26
Pittman v. *Home Owners' Loan Corporation*, 308 U. S. 21, 84 L. Ed. 19 ..... 5, 14
Southern Package Corp. v. *State Tax Commission*, 164 So. 45, 174 Miss. 212 18
State ex rel. v. *Allen*, 180 Miss. 659, 177 So. 763 18
Sunshine Anthracite Coal Co. v. *Adkins*, — U. S. —, 84 L. Ed. 825 13
Tradesmens National Bank v. *Oklahoma Tax Commission*, — U. S. —, 84 L. Ed. 588 ..... 13, 15
United States v. *Summerlin*, — U. S. —, 84 L. Ed. 963 ..... 5, 9
Western U. Teleg. Co. v. *Texas*, 105 U. S. 460, 26 L. Ed. 1067 ..... 19, 24, 26
Williams v. *Talladega*, 226 U. S. 404, 57 L. Ed. 275 25
Wisconsin Lumber Co. v. *State*, 97 Miss. 571, 54 So. 247 ..... 23, 27
Woodrich v. *St. Catherine Gravel Co.*, 195 So. 307 18

STATUTES CITED.

	Page
Commodity Credit Corporation Act, Act of March 8, 1938, Chapter 44, Section 5, 52 Stat. 108, 15 U. S. C. A., 713-a(5), Pocket Edition	2, 21
Constitution of Mississippi, Sec. 145	21
Executive Order 3640	2
Judicial Code, Sec. 237, as amended	7
Laws of Mississippi, 1934, Chapter 119	2
Laws of Mississippi, 1934, Chapter 119:	
Sec. 1	10
Sec. 2	11
Sec. 2(f) as amended, Sec. 6, Chapter 158, Laws 1936	11
Sec. 2-h, as amended, Chapter 222, Laws 1934	11
United States Warehouse Act, Chapter 313, 39 Stat. 486, as amended Chapter 10, 42 Stat. 1282, U. S. C. A., Title 7, Sections 241 et seq.	1

OTHER AUTHORITY CITED.

25 R. C. L. 959, Sec. 215	22

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 207

COMPRESS OF UNION, ET AL.,
Petitioner,

vs.

A. H. STONE, TAX COMMISSIONER.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Compress of Union, a Mississippi corporation (called plaintiff), with J. W. Henry and J. N. Cole, Jr., sureties on the appeal bond to the Mississippi Supreme Court, called petitioner, show:

A.

Summary Statement of Matter Involved.

Plaintiff, in Mississippi, compresses and stores bales of cotton, being licensed as a Warehouse under the United States Warehouse Act, Chapter 313, 39 Stat. 486, as amended, Chapter 10, 42 Stat. 1282, U. S. C. A., Title 7, Sections 241, *et seq.*, serving the Commodity Credit Corporation, herein called Credit Corporation, an agency of the

United States, chartered under the laws of Delaware, pursuant to Executive Order 3640, possessing statutory immunity from State taxation, Act March 8, 1938, Chapter 44, Section 5, 52 Stat. 108, 15 U. S. C. A., 713a-5, Pocket Edition (Appendix A hereto).

Under Chapter 119, Laws of Mississippi, 1934, and amendments thereto, (Appendix B), plaintiff deducted from its sales tax return amounts received for compressing and storing each bale of cotton for Credit Corporation, aggregating $41,025.50, and was compelled to pay two per cent thereof, aggregating $820.15 under protest, wherefor recovery is sought.

The Mississippi statutes are epitomized in the argument, *infra*, and appear in full, Appendix B hereto.

Statement of the Case.

Plaintiff, on April 5, 1939, in the Newton County Court, sued respondent, alleging

(1) Plaintiff was in the business of warehousing and compressing cotton, being duly licensed under the United States Warehouse Act, *supra;*

(2) Respondent as Tax Commissioner, must enforce the Mississippi statutes, (Appendix B).

(3) Respondent claimed liability of plaintiff for such amount wrongfully exacted as an additional tax under said statutes on account of "storage and compression charges collected by plaintiff from Commodity Credit Corporation, an agent and instrumentality of the United States Government, for the period from July 1, 1937 to April 30, 1938."

(4) Said tax represents 2% "of the gross amount of the compression and storage charges collected by it from Commodity Credit Corporation, under and by virtue of contracts between plaintiff and Commodity Credit Corporation,

which provide that the cotton shall be compressed at a fixed price per bale, and that it shall be stored at a fixed price per bale per month * * *." The Credit Corporation "is essentially a lending institution, making loans principally to producers to finance the carrying and orderly marketing of agricultural commodities, all pursuant to the provisions of the Agricultural Adjustment Act of the United States * * * in all cases, the cotton on which loans were made, was stored in a duly licensed and approved warehouse * * *, the cotton being stored and held pursuant to contracts * * * between the Warehouseman and Commodity Credit Corporation. Plaintiff was not liable for the payment of the alleged additional tax * * * because that amount represented 2% of the gross amount collected by it as storage and compression charges from the Commodity Credit Corporation (being sales of service)."

"The State of Mississippi is prohibited by its own legislative act and by the Constitution of the United States and its statutes, from levying and collecting a tax on sales thus made to the United States Government through its agency and instrumentality, the Commodity Credit Corporation, and the exaction of the alleged tax violates the Constitution of the United States and Statutes thereof because it is a direct burden upon the exercise of a Federal governmental function. The collection of the alleged tax hinders Commodity Credit Corporation in the efficient exercise of the powers and duties which it was organized to discharge, increases the cost of the service which this instrumentality renders in behalf of the United States Government, deprives it of the power to properly and freely serve the Government in the manner intended, is a direct obstruction to the exercise of Federal powers, and violates the immunity of the Federal Government from taxation by the States. The imposition of the alleged tax on the business and functions

of Commodity Credit Corporation in its dealings with Plaintiff was, therefore, unauthorized and unlawful, and Plaintiff is entitled to repayment of same from the Defendant."

To this declaration, respondent demurred, raising certain local questions adversely decided, but further assigning:

"5. Neither the Constitution of the United States nor the Constitution of the State of Mississippi prohibits the State from levying and collecting the tax paid by plaintiff.

"6. The tax levied upon and collected from plaintiff is not a tax on the United States Government or any instrumentality thereof" (R. 8-9).

The demurrer was sustained (R. 11), appeal had, and the Supreme Court, the highest court of Mississippi where the question could be considered, ruled against petitioner and thereby the question is sought to be brought here.

There was no opinion in the Circuit Court, but the opinion in the Supreme Court appears as Appendix C, as yet unofficially reported.

The judgment in the Circuit Court of Newton County was entered August 18, 1939 (R. 11), the final judgment in the Supreme Court of Mississippi, April 8, 1940.

B.

Reasons Relied on for Allowance of Writ.

The questions here are important—

(a) May Mississippi impose a privilege tax upon a Federally licensed warehouse and compress company, measured by gross receipts, from (1) compression, and (2) storage of each bale of cotton stored or compressed by the Credit Corporation, whereunder the cost to such Credit Corporation is essentially augmented by such tax, when,

as to such Credit Corporation, there is operative a broad Federal immunity, delineated in the Commodity Credit Corporation Act (Appendix A hereto). 52 Stat. 108, 15 U. S. C. A. 713a-5.

Compare *Pittman* v. *Home Owners' Loan Corporation*, 308 U. S. 21, 84 L. Ed. 16; *Federal Land Bank* v. *Crosland*, 261 U. S. 374, 67 L. Ed. 703, 29 A. L. R. 1; *McGoldrick* v. *Compagnie Generale Transatlantique*, — U. S. —, 84 L. Ed. 602; *McGoldrick* v. *Gulf Oil Corporation*, — U. S. —, 84 L. Ed. 597.

(b) Whether, pursuant to the express provisions of exemption of the Credit Corporation, as a Federal instrumentality, the tax imposition contravenes the Federal Constitution as to national sovereignty. *United States* v. *Arlene Summerlin*, — U. S. —, 84 L. Ed. 963, authorities *supra*.

(c) The immunity of the Commodity Credit Corporation under the Commodity Credit Corporation Act (Appendix A), approved March 8, 1938, must have thereinto integrated, to effectuate the intent of Congress, the decisions of this Court then (March 8, 1938) existent and controlling. This Court by a change of decision since March 8, 1938, is powerless to amend by judicial legislation this Act of Congress and thereby change the immunization granted at the time of its enactment.

(d) And for other causes apparent.

WHEREFORE, petitioner prays for a Writ of Certiorari to the Supreme Court of the State of Mississippi, commanding that court forthwith to certify to this Court for review on a day certain therein named a full and complete transcript of the records and of proceedings in the cause entitled and numbered on its docket, *Compress of Union* v. *Stone*, No. 34,011, and that said judgment of said court may

be reversed and petitioner prays for such other and further relief as to this Honorable Court seems meet. Therefor petitioner prays.

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